Supreme Court, U.S.
FILED
081541 MAY 13 2009
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No. _____

IN THE

Supreme Court of the United States

BENJAMIN COVARRUBIAS RUEZGA,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether, where a search warrant affidavit did not contain any probable cause for to support a search of anything but a detached house located in the rear of the property searched, and contained no information indicating that the same persons controlled and occupied all the structures on the property, a search based on a warrant that recited that all structures on the property were "controlled and occupied by the residents of the main property" was objectively unreasonable.

2. Whether, once the officers entered the front door of the first floor of the two story house in front of the property and learned that it was broken up into separate apartments, they could no longer rely on the language of the warrant stating that all structures were occupied by the residents of the main property.

3. Whether, given the above, the search of petitioner's apartment on the second floor of the two story house would not fall under the "good faith" exception of *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984).

LIST OF ALL PARTIES

Petitioner

BENJAMIN COVARRUBIAS RUEZGA.

Respondent

PEOPLE OF THE STATE OF CALIFORNIA.

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS OR ADMINISTRATIVE AGENCIES.

The California Supreme Court's order and California Court of Appeal's opinion are unpublished. They are attached as an appendix.

BASIS FOR JURISDICTION IN THE SUPREME COURT

1. Date of entry of order sought to be reviewed: February 18, 2009 (order denying petition for review).

2. Date of any order respecting rehearing: not applicable.

3. Statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question: 28 U.S.C. section 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution

Fourth Amendment. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourteenth Amendment. Section. 1. ..... No State shall ... deprive any person of life, liberty, or property, without due process of law...

Federal Statutes

28 U.S.C. sectiuon 1257(a): Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

State Statutes

California Constitution, Article I, section 1: . . . no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

California Health and Safety Code section 11366.5(a): (a) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing

any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or in the state prison.

California Penal Code section 1525: A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. . . .

California Penal Code section 1526: (a) The magistrate, before issuing the warrant, may examine on oath the person seeking the warrant and any witnesses the person may produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the party or parties making them.

(b) In lieu of the written affidavit required in subdivision (a), the magistrate may take an oral statement under oath under one of the following conditions:

(1) The oath shall be made under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be an affidavit for the purposes of this chapter. In these cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative in these cases, the sworn oral statement shall be recorded by a certified court reporter and the transcript of the statement shall be certified by the reporter, after which the magistrate receiving it shall certify the transcript which shall be filed

with the clerk of the court.

(2) The oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, as follows:

(A) The oath is made during a telephone conversation with the magistrate, whereafter the affiant shall sign his or her affidavit in support of the application for the search warrant. The affiant's signature shall be in the form of a digital signature if electronic mail is used for transmission to the magistrate. The proposed search warrant and all supporting affidavits and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment or electronic mail.

(B) The magistrate shall confirm with the affiant the receipt of the search warrant and the supporting affidavits and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the affiant's signature or digital signature is acknowledged as genuine.

California Penal Code section 1538.5(m): . . . A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty. Review on appeal may be obtained by the defendant provided that at some stage of the proceedings prior to conviction he or she has moved for the return of property or the suppression of the evidence.

California Penal Code section 12280(b): Any person who, within this state, possesses any assault weapon, except as provided in this chapter, shall be punished by imprisonment in a county jail for a period not exceeding one year, or by imprisonment in the state prison.

STATEMENT OF THE CASE

1. The investigation and search warrant affidavit

This petition involves the search of three apartments and a house located at 988 Runnymede Street, East Palo Alto, California, pursuant to a search warrant for "988 Runnymede Street" that described the property as "a two story family dwelling" with "two detached structures to the rear of the property which are controlled and occupied by the residents of the main property." (Augmented Clerk's Transcript ("A.C.T.") 1-2, 26-27.)

According to the search warrant affidavit prepared by Soledad Police Investigator Thomas Marchese, on May 5, 2006, Soldad police officers served a search warrant on 417 Center Street, Watsonville, California and recovered a large quantity of pseudoephedrine cold pills. (A.C.T. 3, 28.) Psuedoephedrine is a precursor of methamphetamine. Jose Martinez, found at the scene of the search, admitted that he had been purchasing the pills at the direction of his brother in law, Miguel Cazares, and that, several times a month, he and Cazares would take the pills to a house in East Palo Alto where methamphetamine was being produced. He said he had made 10-15 trips and had seen others drop off pills. (A.C.T. 3, 28.)

Martinez agreed to take the officers to the house in East Palo Alto. Martinez told the officers that the methamphetamine was being manufactured in the second detached structure to the rear of the property. (A.C.T. 3.) Martinez in fact went to the location with East Palo Alto Detective Ed Soares and advised Soares that he and Cazares had delivered the pills to "Taquache." (A.C.T. 4, 29.) Records of the East Palo Alto police department showed that "Taquache" was a nickname for Angel Lara Garcia and that Garcia resided at 988 Runnymede Street in East Palo Alto. (A.C.T. 4, 29.) While at 988 Runnymede Street, Soares observed two Hispanic males take an object from their car to a structure in the rear of the property. Soares also noticed that a structure in the rear of the property had bars on its windows and about a dozen ventilation pipes on its roof. (A.C.T. 5, 30.)

The search warrant affidavit also mentioned that the affiant had received information from the DEA and BNE through East Palo Alto Lieutenant Alipio also mentioning investigations regarding Angel Garcia and the location, Garcia being a suspect in the distribution of methamphetamine. Specifically, DEA Agent Donlin had told Lieutenant Alipio that his informant had been to the "residence" on multiple occasions to pick up methamphetamine from Garcia. (A.C.T. 5, 30.) BNE Agent Camps had told Lieutenant Alipio that there had been a three year investigation of methamphetamine production, sales, and distribution of methamphetamine involving 988 Runnymede Street and Garcia. (A.C.T. 5, 30.)

The warrant affidavit, however, did not mention that any of the transactions described occurred in any part of the property except a detached structure at the rear. Otherwise,

the affidavit simply refered generically to "the residence" or "988 Runnymede Street" without specifying any particular location at that address. There was no information in the affidavit indicating that pills were delivered, methamphetamine picked up, or any illicit or suspicious transactions had occurred in or involving the two story house in the front of the property.

Although not mentioned in the search warrant affidavit, the following details were visible from the outside of the property.

• Two electric meters, indicating that the power company was billing portions of the property separately. (C.T. 280.)

• The letter "A" on the door on the street side of the two story structure, lower level. (C.T. 266, 281.)

• The letter "B" on the door on the back side of the two story structure, lower level. (C.T. 281.)

2. Execution of the search warrant

After the issuance of the search warrant, approximately 35 law enforcement officers responded to 988 Runnymede to execute it. They were divided into multiple teams to address the various different sections of the property. (RT 51:14-26). They made entry into the front two story house through the door on the street side and the rear house at about the same time. (RT 52: 7-9).

a. Search of the three apartments in the front house.

Upon entry through the door on the street side, the officers discovered that the unit was an unfurnished, unoccupied apartment with no internal access to any other portion of the front two story house. (RT 52:21-25.) The officers then went around to the back of the front house and found a door on the lower level with the letter "B" affixed to the door. (RT 124:2-5) Officers entered and found it to be a second furnished apartment unoccupied at the time of the search, with no internal access to the front apartment or to the second story of the house. Officers later discovered that this unit was occupied by an African-American woman and her two children. (RT 110:21-22.) The officers then found an exterior stairway leading to a second floor balcony at the rear of the two story house. They ascended the stairway and found a door leading to a single apartment occupying the entire second floor. This apartment was occupied by appellant. During the entry of the bottom rear apartment, appellant had come out of the second floor apartment onto the balcony and asked what was going on. (RT 54: 18-20). He was ordered, at gun-point, not to move and he complied. (RT 54:20-23).

No drugs were located in any of the three apartments in the front house. Police seized a collection of firearms in appellant's apartment including four assault rifles. They noticed some cleaning supplies that they suspected had been pilfered from Stanford Hospital, where appellant worked. This lead to a second search warrant for the supplies seen during the first search. (RT. 265.)

b. Search of the rear house

The police searched the rear house at approximately the

same time that they entered the front, ground floor apartment in the front house. Upon approaching the rear house, the officers saw that the windows were draped with flags to prevent a clear view inside. (RT 65:8-13). They also saw multiple people inside moving from the living room in a westerly direction towards the hallway. (RT 66: 23-67: 6), as if they were attempting either to escape or destroy or secrete evidence. (RT 67: 10-13). The officers entered and found that the rear structure was a three bedroom, two bathroom, single family house. (RT. 265.) Angel Lara Garcia in a locked bathroom, leaning over the tub with the water running and wet hands. (RT 68:20-26). They noted the odor of chemicals and found pseudoephedrine pills, suspected methamphetamine, chemicals and apparent residue of methamphetamine manufacturing, suspected cocaine, several thousand dollars in cash lying on the floor and on a chair, scales, and two 9mm loaded pistols.

c. Additional evidence that the property was composed of separate apartments.

Evidence introduced by appellant as part of the motion to suppress confirmed that appellant owned the entire property and that the rear house had been rented to Angel Lara Garcia for about five years as a single family dwelling. (CT. 265-266, 280-298.) The evidence included utility bills (CT. 282-285.), a rental agreement (CT. 294-295), and documentation from the City of Palo Alto Building Department showing that the rear structure had been built as a separate single family dwelling and permitted as such. (CT. 286-293.) The building application and permit for the back house dated from August 19, 1986. (RT. 291.) The diagram for the site shows the front house, the

back house, and a third structure described as a carport associated with the rear house. (C.T. 288, 291.) A later building permit dated February 17, 1995 authorized the conversion of the second story of the front house into an apartment and exterior deck. (C.T. 296.)

3. Motion to suppress evidence.

Appellant was charged, along with various other defendants, with offenses arising out of the drug activity. Appellant was also charged with various offenses relating to the assault weapons found in his apartment.

On November 22, 2006, appellant moved to suppress the evidence seized in the warrant searches and all fruits of the searches, including statements, under Penal Code section 1538.5. (RT. 259-298.) Appellant argued that the warrant failed to describe the property with particularity and did not contain any probable cause to search the three apartments located in the front two story house. (RT. 268-271.) Appellant also argued that once the officers discovered during the search that the front house actually contained more than one apartment, any further execution of the search warrant to search the front house was unreasonable (RT. 271-274), and that the affidavit contained false statements that the four apartments were actually all one residence. (RT. 274.)

The prosecution responded on December 1, 2006, arguing that the police did not know at the time they obtained the search warrant that the four apartments were actually four separate apartments. (RT. 299-317.) The prosecution did not respond to appellant's argument that once the police

discovered that the front house contained more than one apartment, it was unreasonable to continue searching the front house.

4. Denial of suppression motion

The trial court denied the motion to suppress. (C.T. 493-505.)

5. Plea preserving right to challenge denial of suppression motion on appeal

On September 5, 2007, petitioner entered a plea of no contest to one count of California Health and Safety Code section 11366.5(a) (knowingly renting to someone for the purpose of manufacturing or distributing drugs), and one count of California Penal Code section 12280(b), (possession of an assault weapon.) He received a sentence of 3 years supervised felony probation with a special condition of one year in the county jail. (C.T. 514-518.) Under the state procedures set forth in California Penal Code section 1538.5(m), appellant retained the right to appeal the denial of his search motion.

6. Direct appeal in State courts.

The California Court of Appeal affirmed petitioner's convictions and sentence. Petitioner's discretionary petition for review was denied by the California Supreme Court on February 18, 2009

ARGUMENT

1. The search warrant affidavit did not contain any probable cause to support a search of anything but the back house.

As with all warrant searches, there were two documents at issue – the affidavit, which was a sworn document, and the warrant, which normally merely describes the property to be searched and the contraband to be sought, and was not sworn.

In this case, the warrant was somewhat unusual. It contained information that was not in the warrant, purportedly supporting a search of all structures on the property:

> "...the two detached structures to the rear of the property... ***are controlled and occupied by the residents of the main property***..."

(A.C.T. 1-2, 26-27, emphasis added.)

The supporting affidavit contained no information suggesting that the "detached structures are controlled and occupied by the residents of the main property." There was no direct information from the informant Martinez or anyone else to this effect, nor was there any indirect information that could have supported such a conclusion. The affidavit mentioned observation of suspicious activities only with regards to the rear structure. Martinez had told the affiant that methamphetamine was manufactured in the "second detached structure to the rear of the property" and mentioned

Angel Garcia. (A.C.T. 3.) Detective Soares observed two Hispanic males taking a package "to a structure to the rear of the property." (A.C.T. 5, 30.) Detective Soares also noticed that the rear structure had bars on its windows and about a dozen ventilation pipes on its roof, which he believed were unusual details (A.C.T. 5, 30), but mentioned nothing about the two story building in front. The rest of the affidavit simply contains vague allusions to the "residence" at 988 Runnymede Street without any clarification about which structure the affiant was referring to.

Thus, the warrant's language that all of the structures on the property were one unit and controlled by the same people exceeded anything in the supporting affidavit. As the warrant was unsworn, and as this additional information appeared out of nowhere, it could not be probable cause to support the warrant. A warrant can't create its own probable cause out of nothing. Otherwise, there would be no need for a supporting affidavit (or, for that matter, a magistrate to review it.)

The requirement that the probable cause must be set forth in the affidavit is a requirement of the Fourth Amendment itself. What gives a warrant any validity under California law is that the statement of probable cause is taken under oath by the magistrate. See Penal Code sections 1525 and 1526(a). Section 1525 codifies the requirement of the Fourth Amendment to the United States Constitution itself, and the substantially identical requirement of Article I, section 1, of the California Constitution, that:

> ". . . no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly

describing the place to be searched, and the persons or things to be seized."

People v. Meza (1984) 162 Cal. App. 3d 25, 34-35, citing section 1525 and *People v. Chavez* (1972) 27 Cal.App.3d 883, 885.

The magistrate may consider the sworn affidavit (or declaration) of the affiant under oath, Penal Code section 1526(a), or the magistrate may take the oral statement of the affiant under oath providing the statement is transcribed by a court reporter, Penal Code section 1526(b), *People v. Meza, id.*, but the supporting probable cause must be stated under oath. See *People v. Murgia* (1974) 43 Cal App 3d 85 (search warrant issued on an unsigned or unsworn affidavit is invalid.)

In addition, the affidavit must provide probable cause supporting the location to be searched. *United States v. Pitts*, 6 F.3d 1366, 1369 (9th Cir. 1993). When a building under suspicion is divided into more than one occupancy unit, the affidavit must set forth probable cause for each unit to be searched. *Maryland v. Garrison*, 480 U.S. 79, 107 S. Ct. 1013, 94 L. Ed. 2d 72 (1987), *United States v. Hinton*, 219 F.2d 324 (7th Cir. 1955), *United States v. Whitney*, 633 F.2d 902 (9th Cir. 1980), and a warrant must describe the particular sub-unit or units to be searched. *United States v. Higgins*, 428 F.2d 232 (7th Cir. 1970), *United States v. Gilman*, 684 F.2d 616 (9th Cir. 1982).

Whether the affiant may have believed or had other information suggesting that the two houses on the property

were under the control of the same people is irrelevant. "The facts upon which the magistrate bases his probable cause determination must appear within the 'four corners' of the warrant ***affidavit***." *People v. Costello* (1988) 204 Cal. App. 3d 431, 451, emphasis added, quoting *United States v. Rubio,* 727 F.2d 786, 795 (9th Cir. 1983), and citing *United States v. Martinez,* 588 F.2d 1227, 1234 (9th Cir. 1978), and *United States v. Anderson,* 453 F.2d 174, 175 (9th Cir. 1971); *United States v. Grandstaff*, 813 F.2d 1353, 1355 (9th Cir. 1987), *People v. Smith* (1976) 17 Cal.3d 845, 852, fn. 3.

The search ***warrant*** is not within the four corners of the affidavit. It is a document issued by the magistrate that is supposed to be based on a review of the affidavit.

As stated by the California Supreme Court in *People v. Superior Court (Corona)* (1981) 30 Cal.3d 193, 204:

> "[a]n otherwise insufficient affidavit cannot be rehabilitated by evidence concerning information possessed by the affiant when he sought the warrant but not disclosed to the issuing magistrate."

Id, citing *Whitely v. Warden,* 401 U.S. 560, 565, fn. 8, 91 S.Ct. 1031, 28 L.Ed.2d 306, 311 (1971) ("A contrary rule would, of course, render the warrant requirements of the Fourth Amendment meaningless."). See also *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983) (the standard for probable cause to issue a search warrant is "whether, given all the circumstances set forth in the affidavit ..., there is a fair probability that contraband or evidence of a crime will be found in a particular place.")

2. Since the inclusion of the front house in the property description in the search warrant was unsupported by the affidavit, the search based on the warrant was objectively unreasonable.

The suppression motion, in the superior court, took a detour into the issue of whether the police recklessly omitted information about the number of separate living units from the search warrant affidavit. The discussion was irrelevant since the affidavit itself didn't claim that all the structures on the property were under the control of the same parties. As the overbroad description was only in the warrant, not the supporting affidavit, *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978) was inapplicable. *Franks* is of concern where:

> "a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant ***affidavit***, and if the allegedly false statement is necessary to the finding of probable cause..."

Franks v. Delaware, 438 U.S. at 155-156, emphasis added.

The trial court analyzed the case as if the allegedly false statements were included in the affidavit and decided the case under *Franks*. The superior court erred. The correct standard for reviewing an overbroad or ambiguous property description that is only in the warrant, as opposed to the underlying affidavit, is the reasonableness standard set forth in *Maryland v. Garrison*, 480 U.S. at 85, 107 S. Ct. 1013, 94 L. Ed. 2d 72: whether the officers knew or should have known, (based on

the probable cause set forth in the supporting affidavit) that a mistake had been made in designating the place to be searched.

> "As the Supreme Court explained, 'By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.'"

People v. Balint (2006) 138 Cal. App. 4th 200, 206, quoting *Maryland v. Garrison* (1987) 480 U.S. at 84. See also *Navarro v. Barthel*, 952 F.2d 331, 332-333 (9th Cir. 1991), citing *United States v. Collins*, 830 F.2d 145 (9th Cir. 1987):

> ". . . the question in this case is whether a police officer in McCleary's position would reasonably have described the location with sufficient particularity to direct those executing the warrant to the correct house on the right. Accordingly, we do not see this as a claim based on judicial deception such that the *Franks* test is triggered. The Warrant Clause categorically protects against unreasonable searches of places inadequately described."

Since there was nothing in the search warrant affidavit suggesting that the back house was under the control of the residents of the front house, or that any of the suspicious activities involved the front house, nor even conclusory language to this effect, it was not objectively reasonable for

the officers to rely on the warrant's description of the property to be searched.

3. Once the officers entered the front house and learned that the front half of the downstairs was actually an unfurnished apartment that did not connect to the rest of the front house, they could no longer objectively rely on the property description in the search warrant.

In *Maryland v. Garrison*, the leading U.S. Supreme Court case regarding an overbroad property description in the search warrant, police officers in Baltimore obtained a warrant to search "the premises known as 2036 Park Avenue third floor apartment" for marijuana and associated material pertaining to its illicit distribution. At the time they obtained the warrant, they believed that there was only one apartment on the third floor of 2036 Park Avenue. The officers' based their belief on information from a reliable informant, their observations of the outside of the building, and information from the utility company.

But there were actually two apartments on the third floor. One was occupied by McWebb, the suspect named in the warrant. The other was occupied by Garrison, an individual unknown to the police.

When the officers served the warrant, they encountered McWebb outside the building, detained him, and obtained a key from him to gain admittance to the building and to the door to the third floor. When they got to the third floor, they encountered Garrison in the hall. The door to his apartment

was open. They entered Garrison's apartment and found heroin, cash, and drug paraphernalia inside. Looking around, the officers realized that Garrison's apartment did not take up the entire third floor. At that point, the officers realized that the third floor contained two apartments. As soon as they became aware of that fact, they discontinued the search of Garrison's apartment. *Maryland v. Garrison*, 480 U.S. at 81, 107 S. Ct. 1013, 94 L. Ed. 2d 72.

The trial court recognized that a search of two or more apartments in the same building must be supported by probable cause for searching each apartment. It ruled, however, that the search of Garrison's apartment was valid because "the officers did not know that there was more than one apartment on the third floor and nothing alerted them of such a fact until after the search had been made and the items were [seized]." *Maryland v. Garrison*, 480 U.S. at 83.

The Supreme Court agreed, but held:

> ". . . if the officers had known, or even if they should have known, that there were two separate dwelling units on the third floor of 2036 Park Avenue, they would have been obligated to exclude respondent's apartment from the scope of the requested warrant," *Maryland v. Garrison*, 480 U.S. at 85, and that the officers "were required to discontinue the search of respondent's apartment as soon as they discovered that there were two separate units on the third floor and therefore were put on notice of the risk that they might be in a unit erroneously included within the terms of the warrant. The officers' conduct and the limits of the

> search were based on the information available as the search proceeded." The Supreme Court concluded that in the situation before it, "it is only after the police begin to execute the warrant and set foot upon the described premises that they will discover the factual mistake and must reasonably limit their search accordingly."

Maryland v. Garrison, 480 U.S. at 89.

In *Garrison*, the police did not realize the multiunit character of the third floor of 2036 Park Avenue until they had already searched Garrison's apartment. Here, the officers knew that the front structure contained more than one apartment once they entered the front apartment of the front house and learned that the apartment took up only half of the downstairs and had no connection to the second floor. The officers also saw that the first apartment was unoccupied, so that the warrant's language that all structures on the property were "controlled ***and occupied*** by the residents of the main property" could not be correct.

Again, unlike *Garrison*, the officers then went around the front structure and found a door in the back, at ground level. They entered, and found a second apartment. This apartment was furnished, but no one was at home. It had no internal connections to the second floor.

At about the same time, other members of the search team had entered the rear structure and found that it was a single family residence containing the drug lab that Martinez said was there.

At that point, the officers knew that, contrary to the statement in the warrant, the structures on the premises contained at least four separate apartments, the three that they had already discovered, and the second floor, which they had not yet examined. The officers confirmed the separate nature of the second floor apartment when they found that the only access was a set of outside stairs leading up to a balcony. But they went up the stairs anyway, entered, and searched defendant's completely separate apartment, finding no drugs, but simply some unrelated allegedly illicit items.

It was as if, in *Garrison,* the police, upon searching the third floor of the apartment building, found two empty apartments and McWebb's apartment, but continued on and searched Garrison's apartment as well. Had the Court been presented with such a situation, it is clear that the Court would have found the search of Garrison's apartment unlawful, for the opinion said:

> ". . . if the officers had known, or even if they should have known, that there were two separate dwelling units on the third floor of 2036 Park Avenue, they would have been obligated to exclude respondent's apartment from the scope of the requested warrant."

Maryland v. Garrison, 480 U.S. at 89.

As the High Court also held in *Zurcher v. Stanford Daily*, 436 U.S. 547, 556, 98 S. Ct. 1970; 56 L. Ed. 2d 525 (1978.)

> "The critical element in a reasonable search is not that the owner of the property is suspected of crime but that

there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought."

This is why a warrant has a property description in the first place. A warrant cannot authorize the police to search four apartments, however "reasonably", if there is only probable cause to believe that contraband will be found in one of the apartments.

4. The search of petitioner's apartment was not allowable under the "good faith" exception of *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984)

The good faith exception of *United States v. Leon* holds that officers serving a search warrant may reasonably rely on the magistrate's determination of probable cause to search. The "good faith" of the officers is in following the determination of the magistrate – not in acting like jolly fellows.

Maryland v. Garrison was decided in 1987, three years after Leon. *Garrison* did not mention *Leon* because the case would have been obviously inapplicable. Officers serving a search warrant couldn't possibly be relying on any determination of a magistrate if, after they start searching, they learn that the property description in the warrant is overbroad:

"*Leon's* good faith rule would not excuse full-blown mistakes in the execution of a warrant... when 'police begin to execute the warrant and . . . discover [a]

> factual mistake, [they] must reasonably limit their search accordingly.'"

United States v. Ricciardelli, 998 F.2d 8, 17 fn 10 (1st Cir. 1993), quoting *Maryland v. Garrison*, 480 U.S. at 89 n.14.

Garrison defines what "good faith" and "reasonableness" mean in the context of an overbroad property description. The Court held that once the police discover their mistake in the description of the property, they ***can't*** continue – no matter how earnest and well meaning they may be.

CONCLUSION

For the above reasons, this honorable Court should grant certiorari in this case.

Dated: Oakland, California, Monday, March 24, 2008.

Robert Joseph Beles

Paul Gilruth McCarthy
Attorneys for *Petitioner*
SONYA DENIECE RANKIN

APPENDIX

THE PEOPLE,
Plaintiff and Respondent,
v.
BENJAMIN COVARRUBIAS RUEZGA,
Defendant and Appellant.

A119317

COURT OF APPEAL OF CALIFORNIA,
FIRST APPELLATE DISTRICT, DIVISION TWO

2008 Cal. App. Unpub. LEXIS 8994

November 19, 2008, Filed

NOTICE: NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 8.1115(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 8.1115(b). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 8.1115.

PRIOR HISTORY:

[*1]

San Mateo County Super. Ct. No. SC061828.

JUDGES: Lambden, J.; Kline, P.J., Richman, J. concurred.

OPINION BY: Lambden

OPINION

Defendant pleaded no contest to one count of knowingly renting a structure to a person for the purpose of manufacturing or distributing drugs (Health & Saf. Code, § 11366.5, subd. (a)) and possession of an assault rifle (Pen. Code, § 12280, subd. (b)). [1] Prior to this plea, he had moved to suppress evidence pursuant to section 1538.5; he now appeals the denial of that motion. Defendant makes various challenges to the validity of the search warrant and the search conducted pursuant to it. We are unpersuaded by his contentions and affirm the lower court's judgment.

BACKGROUND

San Mateo County Deputy Sheriff Brad Buckwalter, assigned to the county narcotic task force, participated in the service of a search warrant at 998 Runnymede Street, East Palo Alto, on May 5, 2006. [2] Defendant owned the property and was in the upstairs of the front house when the police conducted their search. The officers found 16 firearms upstairs in the front house. The search also revealed that the structure behind the front house at the back of the property

[*2]

was being used to make methamphetamine. The officers

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[1] All further unspecified code sections refer to the Penal Code.

[2] The facts are from the evidence presented at defendant's preliminary hearing and the motion to suppress.

recovered various drugs and firearms from the back structure.

The Search Warrant

The search warrant signed by the magistrate on May 5, 2006, found probable cause for the issuance of the search warrant. The warrant commanded the officers to search 998 Runnymede Street, which was "described as a two-story family dwelling. The residence is an orange/red colored wooden structure. The numbers '998' are affixed to a black mailbox in front of the residence. The numbers can be clearly seen from Runnymede Street. Additionally, there are two detached structures to the rear of the property which are controlled and occupied by the residents of the main property." The warrant described the premises as "including all rooms, safes, storage areas, containers, surrounding grounds, trash areas, garages, crawl spaces, vehicles and outbuildings assigned to or part of residence located at 998 Runnymede Street . . . ."

Officer Thomas Marchese, the affiant, stated that during the morning of May 5, 2006, officers searched pursuant to a warrant of a residence

[*3]

in Watsonville. During the search of the home, the officers recovered large quantities of pseudoephedrine pills in the room of Jose Guadalupe Martinez and in the room of his brother-in-law, Miguel Angel Cazares. The officers also found numerous receipts for purchases of pseudoephedrine products. Marchese interviewed Martinez; he reported that he had been

purchasing pseudoephedrine pills for Cazares. Martinez disclosed that several times per month he would drive Cazares to a house in East Palo Alto where methamphetamine was being produced. Martinez claimed that he remained in the vehicle while Cazares entered the house to deliver the pills. He added that frequently he spotted a Chevrolet Avalanche parked at the residence. His last delivery of pills to this residence, according to Martinez, was approximately two weeks earlier. Additionally, Martinez reported that several weeks earlier a drug deal had gone "sour" at this residence in East Palo Alto resulting in a "shoot out" that was not reported to the police.

When Cazares returned home, the police also questioned him. He stated that he liked to keep large quantities of cold pills around in case he became sick. When told that the officers

[*4]

knew about the house in East Palo Alto, Cazares stated that he had sold some pills to people at that house because some people there were sick.

Martinez did not know the exact address of the house in East Palo Alto but he agreed to point the house out to the officers. According to the affidavit: "Martinez described the residence as being a two-story dwelling with the second story shaped like a wedge, coming to a point. He stated there was a driveway running down the right side and a second detached structure to the rear of the property where the methamphetamine was being 'cooked.'" Subsequently, Martinez drove with an East Palo Alto police officer in an

unmarked vehicle and Martinez identified 998 Runnymede Street as the residence where he had gone with Cazares to deliver the pills. Martinez admitted that he had actually gone into the residence and that the person there was named "Taquache." The affiant, Marchese, confirmed that "Taquache" was the street moniker of Angel Lara Garcia (Angel) [3] and that he resided at 998 Runnymede Street. Marchese also discovered that Angel had an extensive criminal history. Additionally, Marchese learned that Angel had once been kidnapped for ransom;

[*5]

the testimony at the trial revealed that Angel had been kidnapped because he was a major drug trafficker and the kidnappers wanted drugs and money from his family.

Marchese corroborated Martinez's statement by confirming with several East Palo Alto police officers that they had received information from reliable informants that an unreported drug related shooting had occurred in the driveway of 998 Runnymede Street several weeks earlier. Additionally, the officer who had accompanied Martinez to the residence at 998 Runnymede described the place as being a two-story dwelling with the second story shaped like a wedge. He stated there was a driveway running down the right side and a second detached structure to the rear of the property and a third, smaller structure, in the rear of the property,

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[3] The search warrant refers to the codefendant as Angel Lara Garcia, but the remainder of the record refers to him as Angel Garcia Lara. To avoid confusion, we refer to him as Angel or use his full name.

which had bars on the windows and approximately a dozen ventilation pipes erected from the roof. He also observed a Chevrolet Avalanche pull up to the property.

In addition, the Drug Enforcement Agency

[*6]

(DEA) reported that it had been conducting surveillance on 998 Runnymede Street on May 4, 2006, after receiving information from a proven informant that he or she had been to the residence on multiple occasions and received various quantities of methamphetamine from "Taquache" or Angel Lara Garcia. A special agent of the Bureau of Narcotics Enforcement (BNE) stated that there had been a three-year investigation involving the production, sales, and distribution of methamphetamine and 998 Runnymede Street was named as a target and Angel Lara Garcia was named as a suspect.

The Execution of the Warrant

After the issuance of the search warrant, on May 5, 2006, approximately 35 officers were involved in the execution of the warrant at 998 Runnymede Street. Buckwalter, who was in charge of the tactical deployment of the officers, testified that there were three structures at 998 Runnymede Street. The first structure is a two-story home with a driveway to the right. Down the driveway is a shed and beyond the shed is a single-story cinder block frame building.

Buckwalter and a number of officers entered the front of the two-story house while other officers entered the back single-

[*7]

block structure. Other officers remained in the center courtyard to provide security and to "hold" the shed.

When no one responded to the officers' knock and notice at the front house, they forced the front door open and entered. The front part of the house was unoccupied and completely unfurnished. A wall separated this unit from the back of the house and it did not connect to the upstairs. Buckwalter and his team left the front of the house and noticed another door on the first floor on the west wall of the front house. They entered and found it to be furnished but not occupied. They then left and went to the exterior stairwell to a porch on the second floor at the back of the front house. The officers went up the stairs and entered the back door; they found defendant on the front porch or patio that hung over the first floor of the property. The officers found 16 weapons on the second floor of this residence.

Buckwalter testified that he spotted at the center of the floor on the second story more than 30 hand instruments that were typically used in hospitals, including forceps, tongs, and scissors. He also found three television monitors, a recorder, and cables running to different [*8] parts of the house. There was access to the attic, which had a window overlooking the front part of the property and two cameras were mounted to look out the window. The attic window had bullet holes. Two cameras were also looking back toward the smaller single-story residence and shed.

When asked what one could see from all of these cameras, Buckwalter responded: "You can see anybody walking or driving from the front of the driveway all the way down to the shed, that's what the shed would cover. The cameras mounted at the front of the house look out on the street and at the threshold of the driveway. The cameras mounted at the west side of the house cover an area somewhat towards the shed, and the other one a little straighter back towards the rear residence."

Buckwalter stated that he spoke with Marchese, who had entered the back house with his team. After approaching the back house, Marchese saw "people moving around and about in the living room through the windows leading to the south bedroom." Some windows had metal bars over them. After the officers gave knock and notice, they observed multiple people from the living room moving westerly out of the living room towards the hallway. **[*9]** Marchese feared that some people were attempting to escape and, consequently, the officers broke down the front metal door.

Once inside the back structure, the officers forced open the door of the bathroom. They spotted Angel by the bathtub; he was on his knees leaning over the bathtub and the water was running. Angel's hands were wet. They ordered Angel to the ground and he complied. The bathtub contained spilled chemicals and a metal spoon. The officers found pseudoephedrine pills. They located a cardboard box "measuring perhaps 18 [inches] wide by 20 [inches] long, 14 inches high, and completely full of blister packs." They uncovered currency in a bowl. They located two loaded guns in the living room. They also found a food processor sealer, which was used to seal plastic bags. They also located cocaine

and methamphetamine. They uncovered over $ 4,000 in cash and Angel had over $ 14,000 on him.

Subsequently, San Mateo Deputy Sheriff Leroy O'Laughlin entered the rear structure. Based on his observations of various chemicals and equipment, he concluded that there was a methamphetamine extraction laboratory in the residence.

On May 6, 2006, San Mateo Deputy Sheriff Daniel Guiney interviewed **[*10]** defendant who waived his rights under *Miranda v. Arizona (1966) 384 U.S. 436*. Defendant stated that he owned 998 Runnymede and that he resided primarily on the second floor of the front building. He reported that he had rented the back home to Angel for approximately three years. The weapons discovered in the front house had, according to defendant, all been legally purchased and all, except one, had been properly registered.

The Arrests and ChargesDefendant and others were arrested. On August 29, 2006, an information charged defendant with possession of narcotics for sale (Health & Saf. Code, § 11378), with a quantity enhancement (*id.*, § 11370.4, subd. (b)(1)), and two arming enhancements (Pen. Code, § 12022, subd. (c)); possessing marijuana for sale (Health & Saf. Code, § 11359); two counts of possessing a controlled substance while armed (*id.*, § 11370.1, subd. (a)); possession of PCP (phencyclidine) for sale (*id.*, § 11383); renting a place for use in the manufacture of narcotics with two arming enhancements (*id.*, § 11366.5, subd. (a)); manufacturing methamphetamine with two arming enhancements (*id.*, § 11379.6, subd. (a)); three counts of possession of an assault weapon (*Pen. Code, § 12280, subd. (b)*);

[*11]

and possession of an illegal firearm (Pen. Code, § 12020, subd. (a)).

Motion to Suppress

On November 22, 2006, defendant moved to suppress the evidence seized in the warrant searches. Defendant argued that the officers had information that illegal activity was occurring in the back house, but the officers never identified any related activity as occurring in the front unit. Further, defendant argued that the search warrant failed to describe the residence, which was a multi-occupancy premises, with sufficient particularity. Defendant submitted pictures showing that the property had two separate electric meters, and that the door on the lower level of the street side of the front building had the letter "A" and the door on the first level of the back side of the front building had the letter "B". Documentation from the building department established that the back building was built as a separate single family dwelling. A later building permit authorized the conversion of the second story of the front house into an apartment.

The court held a hearing on the motion to suppress on February 16, 2007. At the hearing, Marchese testified that when he first saw the residence, he noticed that

[*12]

the upstairs had two surveillance cameras and multiple bullet holes. His team's assignment was "to make entry into what we thought to be the lab complex to the rear, just attached

structures to the rear of the main home." He stated that directly in front of the back building was a metal fenced area with a pit bull.

Marchese testified that they gave knock and notice at the back house and the officers then observed movement inside. The officers were able to knock the door open with a metal ram; the officers immediately saw currency scattered around the first room. He then forced entry into the bathroom where they found Angel. Marchese reported that his eyes and throat began to burn when they entered the bathroom.

The hearing continued on February 23, 2007, and Buckwalter testified. He said that he had driven by 998 Runnymede Street on many occasions during the prior six months. He had noticed the surveillance cameras in the window and the bullet holes in the upstairs window. Prior to entering the front house, he had no indication that it was a multiple-unit residence.

Buckwalter stated that his team entered the front door of the two-story residence and discovered that this portion of the

[*13]

house was vacant and unfurnished and provided no access to the remainder of the house. He noticed that the front door had the letter "A" attached to it. He asserted that this letter was not visible from the street. He knew that the upstairs was occupied because he heard another officer, who was looking up at the balcony at the front of the house and pointing his service weapon at someone standing up there, yelling to the person to freeze and put his hands up.

After determining that he did not have access to the remainder of the house from the front of the house, Buckwalter and his team exited and went down the driveway where they observed another door. This door, which was also on the ground level, had the letter "B." They gave knock and notice but received no response. They forced the door open; Buckwalter saw personal items in this portion of the house, but no one was present.

Buckwalter located an exterior flight of stairs in the back of the house that led to a balcony on the second floor; he also spotted a door that had no external markings. He gave the knock and notice announcement and then forced the door open when no one responded. He saw an unfurnished kitchen and dining room.

[*14]

He also spotted several boxes. As he was proceeding down the hallway, he heard Marchese give the code word for hazardous material on the police radio. As he conducted his sweep, he saw weapons in the second bedroom. He made that observation within 20 seconds of entry. The weapons were potentially assault weapons and one had "a tripod extension on it or a tripod kit on it." The trial court announced at the close of the hearing that it did not believe that the officers knew ahead of time that there were multiple residences. The court pointed out that Cazares, who had not cooperated with the police, knew the police were interested in the East Palo Alto home and there was a significant risk that he would tip off Angel. The court took the matter under submission. On February 27, 2007, the court denied defendant's motion to suppress.

The Plea, Sentence, and Appeal

On September 5, 2007, defendant pleaded nolo contendere to knowingly renting a structure to a person for the purpose of manufacturing or distributing drugs (Health & Saf. Code, § 11366.5, subd. (a)) and possession of an assault rifle (Pen. Code, § 12280, subd. (b)), in exchange for dismissal of the other charges. The trial court sentenced

[*15]

defendant to three years of supervised felony probation with a special condition of one year in the county jail.

Defendant filed a timely notice of appeal from the order denying his motion to suppress.

DISCUSSION

Defendant contends that the lower court should have granted his motion to suppress the items uncovered on the second floor of the front residence. [4] He maintains that probable cause did not support the search warrant's inclusion of the front house. He also argues that, once the officers entered the front house and learned that the residence had three separate apartments, they could no longer objectively rely on the property description in the search warrant. Finally, he asserts that the affiant was chargeable with the knowledge of the East Palo Alto Building Department that a building permit authorized the conversion of the second story of the front

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[4] The motion to suppress concerned the 16 firearms and other items seized from the second floor of the front house.

house into an apartment. We consider each of these arguments.

I.
Standard of Review

Defendant argues that probable cause did not support the search warrant and that the lower court should have granted his motion to suppress.

[*16]

The basic standard for probable cause to issue a search warrant is "whether, given all the circumstances set forth in the affidavit . . ., there is a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238.) Probable cause is not measurable by formulas; rather, its existence depends on the totality of the circumstances. (*Id.* at p. 236.)

We overturn the lower court's determination to issue a search warrant only if the affidavit upon which it is based fails as a matter of law to set forth sufficient competent evidence to support the magistrate's probable cause finding. (*People v. Butler* (1966) 64 Cal.2d 842.) Moreover, the affidavit carries with it a presumption of validity. (*Franks v. Delaware* (1978) 438 U.S. 154, 171 (*Franks*).) Courts resolve doubtful or marginal cases in favor of the warrant (*United States v. Ventresca* (1965) 380 U.S. 102, 109), but must review the sufficiency of affidavits conscientiously to ensure that the magistrate had sufficient information and did not merely ratify the bare conclusions of others (*Illinois v. Gates, supra,* 462 U.S. at p. 239).

"An appellate court's review of a trial

[*17]

court's ruling on a motion to suppress is governed by well-settled principles. [Citations.] [P] In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] 'The [trial] court's resolution of each of these inquiries is, of course, subject to appellate review.' [Citations.] [P] The court's resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, viz., the reasonableness of the challenged police conduct, is also subject to independent review. [Citations.] The reason is plain: 'it is "the ultimate responsibility of the appellate court to measure the facts, as found by the trier, against the constitutional standard of reasonableness."' [Citation.]" (*People v. Williams (1988) 45 Cal.3d 1268, 1301.*)

[*18]

II.

The Warrant's Inclusion of the Front House

Defendant argues that the search warrant affidavit did not contain any probable cause to support a search of the front of the house. He claims that the affidavit only established probable cause to search the cinder block building in the rear, and therefore the warrant authorizing the search of all three structures on the property was overbroad.

> "The Warrant Clause of the Fourth Amendment categorically prohibits the issuance of any warrant except one 'particularly describing the place to be searched and the persons or things to be seized.' The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit. Thus, the scope of a lawful search is 'defined by the object of the search and the places in which there is probable cause to believe that it may be found.'" (*Maryland v. Garrison (1987) 480 U.S. 79, 84*, fn.
>
> **[*19]**
>
> omitted (*Garrison*).)

Defendant contends that Martinez told the officer that the methamphetamine was being made in the back house. [5]

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[5] We note that defendant quotes from the record but provides no citations to the record in this part of his argument section. In fact, there are almost no citations to the record in any of his argument sections. Citations to the record

Additionally, an officer who had been observing the property saw two males exit a Chevy Avalanche on the property and take an object from the vehicle to the "structure to the rear." This information, according to defendant, limited the suspected activity to the back structure and therefore defendant objects to the warrant authorizing a search of the front house.

The affidavit made it clear that there were three buildings at 998 Runnymede Street. It stated that there was a front two-story dwelling with the second story shaped like a wedge and a second detached structure to the rear of the property. The affidavit also stated that there "was a third, smaller structure in the rear of the property, which has bars on the windows and approximately a dozen ventilation pipes erected from the roof which vary in size." As already noted, the warrant authorized a search of all three buildings.

Contrary to defendant's argument, a complete review of the affidavit establishes that it set forth information to support probable cause that activities related to drug activity were occurring on the entire premises of 998 Runnymede Street,

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in the factual portion of the record do not relieve the party from citing to the record in the argument portion of the brief because "any reference in the brief must be supported by a citation, regardless of where in the brief that reference appears." (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16.) Each brief must "[s]upport any

reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C).) Although we may disregard contentions unsupported by citation to the record (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979), we will disregard this noncompliance and consider the merit of defendant's arguments (see Cal. Rules or Court, rule 8.204(e)(2)(C)).

and

[*21]

not limited to the back structure. According to the affidavit, Martinez told Officer Marchese, the affiant, that he would deliver the pills to a house in East Palo Alto and that he remained in the vehicle while Cazares "went inside the house to deliver the pills . . . ." Martinez specified that the methamphetamine was being "cooked" in the rear structure, but he did not suggest that the drug transactions or other activities connected to the distribution of drugs were limited to the back structure.

Indeed, much of the information set forth by the affiant related to information related to the "residence" or to the address of 998 Runnymede Street. Martinez told the affiant that he had delivered the pills to "Taquache," who was Angel; Angel's address was 998 Runnymede Street. The DEA told affiant that an informant had told an agent that he or she had "been to the residence on multiple occasions and taken delivery of various quantities of methamphetamine . . . ." Further, an agent for BNE stated there had been a three year investigation "involving the production, sales and distribution of methamphetamine in which 998 Runnymede Street was named as a target." Finally, police officers confirmed

[*22]

that an unreported drug related shooting had occurred in the driveway of 998 Runnymede. As already discussed, the affidavit stated that Martinez reported that the methamphetamine was being made in the back cinder-block

structure, but there was evidence that the illegal activities were occurring on the property of 998 Runnymede Street; the affidavit does not limit the illegal activity to the back house. Indeed, the affiant received information that a shoot-out had occurred in the driveway to the right of the main residence, not in or next to the back structure. Accordingly, we conclude that this information was more than sufficient to provide probable cause to search the front house, as well as the rear structure. (See *People v. Gallegos (2002)* 96 Cal.App.4th 612, 625 [“‘”[A] warrant to search ‘premises’ located at a particular address is sufficient to support the search of outbuildings and appurtenances in addition to a main building when the various places searched are part of a single integral unit”’”].)

Defendant cites a number of cases holding that the affidavit must set forth probable cause for each building to be searched and there was not probable cause for each unit of the front

[*23]

house. (See, e.g., *Garrison, supra,* 480 U.S. 79.) Here, however, the affidavit provided probable cause that criminal activity was being conducted on the entire premises. As the trial court found, the officers knew there was a two-story front residence and back buildings, but there was nothing to alert them to the fact that the front building was subdivided into several units. We agree that the officers were not on notice of the property's multi-dwelling character and the affidavit provided probable cause that criminal activity was occurring on the entire premises at 998 Runnymede Street, which included the front two-story house.

Defendant also claims that the warrant was overbroad by including the front house and therefore it was objectively unreasonable. [6] He asserts that the officers relied on an overbroad warrant and therefore the issue is whether the officers knew or should have known that a mistake had been made in designating the place to be searched. (See *Garrison, supra,* 480 U.S. at p. 85 [no constitutional violation when warrant permitted a search of apartment on third-floor and officers in executing the warrant discovered there were two apartments].) As already mentioned,

[*24]

the affidavit did state that the premises included three buildings and it did not limit the description of suspicious activities to the back building. Thus, it was reasonable for the officers to rely on the warrant's description of the property to be searched.

Accordingly, we conclude that the affidavit presented to the magistrate contained probable cause to search the entire property at 998 Runnymede Street, which included the front two-story house, and therefore the warrant was not overbroad. [7]

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[6] Defendant claims that the overbroad description was only in the warrant, not in the supporting affidavit, and therefore the lower court improperly applied *Franks, supra*, 438 U.S. 154. The record does not indicate that the lower court improperly used *Franks*. Rather, defendant had requested an evidentiary hearing to traverse the search warrant under *Franks* and the trial court found that there was no showing to satisfy the threshold requirements under *Franks*.

[7] Since we conclude that probable cause supported the search warrant, we need not address defendant's argument that the good faith exception to the exclusionary rule does not apply

III.
Execution of the Warrant

Defendant contends that, once

[*25]

the officers entered the front house and realized that it was comprised of separate apartments that were not connected, the officers could not have objectively relied on the property description in the warrant that the front house was a two-story family dwelling.

Here, the warrant clearly described the premises to be searched: the front twostory house and the two structures in the back. Although a warrant to search a single dwelling unit located at a particular address may validly permit the search of outbuildings and appurtenances thereto, it will not support the search of multiple living units on the same property absent the existence of probable cause to search each unit or a reasonable basis for believing that the entire premises are a single living unit. (*People v. Estrada* (1965) 234 Cal.App.2d 136, 146 [holding that an overly broad warrant is void]; see generally *People v. Dumas* (1973) 9 Cal.3d 871, 881, fn. 5.)

However, even when the warrant specifies one dwelling rather than multi-units, the search of all the units is permitted when there is probable cause for believing that the premises are a single living unit. (*Garrison, supra,* 480 U.S. at pp. 85, 87-88.) The constitutionality

[*26]

of the officers' execution of a search warrant is assessed "in light of the information available to them at the time they acted." (*Ibid.*) A search of multi-units when the warrant specifies one dwelling is lawful if based on the officers' reasonable belief that those quarters were within the scope of the warrant. (*Id.* at pp. 87-89; compare *United States v. Cannon* (9th Cir. 2001) 264 F.3d 875, *879-880* [holding that officers are required to stop a search and obtain a separate warrant upon discovering that the place being searched constituted the separate living quarters of a *third party* as to whom no probable cause was established].)

Defendant relies on *Garrison, supra,* 480 U.S. 79, when arguing that the search of the upstairs front building was illegal. In *Garrison,* the police obtained a search warrant for an entire floor of a building that the officers reasonably believed contained only the suspect's apartment. (*Id. at p. 80.*) In fact, there was a second apartment on the floor occupied by the defendant. (*Ibid.*) Believing it to be the suspect's apartment, the police searched the defendant's apartment. (*Ibid.*) After discovering contraband, officers realized they were in the wrong apartment

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and stopped the search. (*Ibid.*) The United States Supreme Court held that the search before discovery of the error was proper and that the contraband was admissible. (*Id.* at pp. 86-89.)

The United States Supreme Court in *Garrison* stated that when police discover separate living units during a search pursuant to a warrant for a single living unit they are "on

notice of the risk that they might be in a unit erroneously included within the terms of the warrant." (*Garrison, supra,* 480 U.S. at p. 87.) The general rule is, once the officers discover multiple apartments not specified in the warrant, they should discontinue the search and either obtain a more specific warrant or limit their search to the defendant's premises. (*Id.* at pp. 86-89.) The *Garrison* court concluded that in the particular situation before it the search of the defendant's apartment was lawful because the officers' failure to realize the warrant was overbroad was "objectively understandable and reasonable." (*Id. at p. 88*; see also *United States v. Kyles* (2nd Cir.1994) 40 F.3d 519, 523-524; *United States v. Cannon* (9th Cir.2001) 264 F.3d 875, 879.) The officers' conduct and the limits of the search were based on the information

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available as the search proceeded. (See *Garrison, supra,* at p. 87.) The court cautioned in a footnote: "'Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability.'" (*Id.* at p. 87, fn.*11*.)

Here, the trial court found that the officers believed that the front house was one residence and, once they discovered there were separate units, it was reasonable for them to believe that the warrant authorized their entry into all three units. The court found that the photographs taken from the street "would not put anyone on notice there were subdivided units

within any structures." We conclude that the record supports this ruling. There were few objective indicia that the house had been converted into three separate units and the house appeared, from an exterior vantage point, to be a single family home, with two structures in the back. The house had only one driveway to the right of the front house and there was only one mailbox that had the address of 998 Runnymede

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Street. The two small downstairs units had an "A" and a "B" on the doors, but the door to the upstairs did not have a letter. Significantly, these letters were not visible from the street.

Prior to entering the front residence, the officers had observed the bullet holes and surveillance cameras on the second floor of that house. Thus, it was reasonable for them to believe that they could gain access to the second floor by entering the first floor and going up stairs. Once the team under Buckwalter's supervision entered the downstairs front door and became aware that the front unit was vacant and provided no access to the remainder of the house, it was reasonable for them to search for a different door to provide them access to the remainder of the house. The officers entered the second unit on the ground floor, which appeared to have someone living there, but no one was present. At that point, the officers knew someone was upstairs because Buckwalter testified that he heard another officer, who was looking up at the balcony at the front of the house and pointing his service weapon at someone standing up there, yelling to the person to freeze and put his hands up.

Since the warrant authorized

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the officers' search of 998 Runnymede, which the officers believed to be the location of various drug activities and the home of Angel, it was not unreasonable for them to believe that the upstairs, which was clearly occupied, was the home of Angel or the place where drug deals were occurring. Based on what they knew at the time, it was reasonable for them to believe that the warrant authorized their entry into the second-floor unit. As Buckwalter entered the upstairs, he saw weapons in the upstairs residence. He made that observation within 20 seconds of entry.

Defendant cites *Steagald v. United States* (1981) 451 U.S. 204, 215, in support of his argument that the police cannot extend a search to a third person's home even if they have probable cause to believe the suspect is there. In *Steagald,* the police had an *arrest warrant* and entered the home of a third person "on their belief" that the suspect *might* be a *guest* there. (*Id. at p. 213.*) That is not the situation before us. The present case involves a search warrant, not a warrant for an arrest. "Search warrants are not directed at persons; they authorize the search of 'place[s]' and the seizure of 'things,' and as a constitutional

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matter they need not even name the person from whom the things will be seized." (*Zurcher v. Stanford Daily* (1978) 436 U.S. 547, 555.) "The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the

property to which entry is sought." (*Id. at p. 556*, fn. omitted.) The officers in the present case did not enter defendant's home because they believed Angel may be visiting there. They entered the upstairs because they believed that drug activity was occurring there and that Angel resided there. This belief was supported by their observations that a person was upstairs on the deck, the windows upstairs had surveillance cameras, there were bullet holes on the second floor, and the address provided for Angel was 998 Runnymede Street.

Once the officers discovered that there were multiple apartments not specified in the warrant, they attempted to find the main residence and to restrict their search to where they believed the drug activity was occurring. (See *Garrison, supra,* 480 U.S. at pp. 86-89.) The officers' conduct was consistent

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with a reasonable effort to ascertain and identify the place intended to be searched within the meaning of the Fourth Amendment. (*Ibid.*) The warrant authorized the officers' entry into the main residence at 998 Runnymede and we agree with the lower court's determination that the execution of the warrant was reasonable under the unfolding events. Once the officers entered the upstairs, the guns were in plain view and therefore the lower court properly rejected defendant's motion to suppress.

IV.
Charging the Police with Knowledge of Information at the East Palo Alto Building Department

Defendant maintains that the knowledge that a building permit in the records of the East Palo Alto Building Department authorized the conversion of the second story of the front house into an apartment is imputed to the police officers. To support this claim, defendant cites *Whiteley v. Warden* (1971) 401 U.S. 560, 564-568 and *People v. Willis* (2002) 28 Cal.4th 22, 38-39.

Defendant's reliance on *Whiteley v. Warden* and *People v. Willis* is misplaced. In *Whiteley v. Warden,* the court was concerned with an arrest based on a *deficient warrant* and not supported by probable cause. (*Whiteley v. Warden, supra,* 401 U.S. at pp. 564-568

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[arrest that is not supported by probable cause remains an illegal arrest even though the arresting officers were unaware of the deficiencies in the warrant].) As already discussed extensively, the warrant in the present case was not defective and authorized a search of the front house. *People v. Willis, supra,* 28 Cal.4th 22 is also inapplicable as the court in this case was concerned with the "good faith" exception to the exclusionary rule (*United States v. Leon* (1984) 468 U.S. 897). In *Willis,* our Supreme Court determined that the search was illegal when the officer mistakenly believed that the defendant was on parole after being given erroneous information by the defendant's parole officer. (*Willis,* supra, at p. 26.) The good faith exception to the exclusionary rule did not apply because the parole officer in this case was acting as an adjunct of the police department when involved in the police investigation. (*Id. at pp. 38-39.*) Here, we are not concerned with the good faith exception to the exclusionary rule as we have concluded

that the search was pursuant to a valid warrant. [8]

We reject defendant's argument. The building department's authority to enforce zoning and building code regulations is not the same as being able to investigate criminal behavior. Further, as the People point out, the building department maintains its property records for civil and administrative purposes and these records are not related to any criminal investigation. The building department was not part of the criminal investigation and was not an adjunct to the law enforcement team.

Defendant repeatedly asserts that he is not challenging the search warrant affidavit. Although he may label his argument something else, his claim is essentially that the affiant had constructive knowledge

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of the public records in the building department and therefore the statements in his affidavit were false. No matter how defendant tries to classify his argument, the challenge is to the affiant's failure to describe the front residence as having

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[8] Additionally, we note that the holding in *People v. Willis* applies only when the individual or agency

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with the pertinent information is "'an adjunct of the law enforcement team.'" (*People v. Wills, supra*, 28 Cal.4th at p. 35.) Defendant claims that that the East Palo Alto Building Department is part of the same municipal government as the police department and responsible for building code enforcement and is therefore a law enforcement agency. Further, he points out that building inspectors are authorized by statute to obtain search warrants to inspect properties for both building and zoning code violations.

separate units.

When a challenge is made to the validity of the supporting affidavit, the lower court must conduct an evidentiary hearing if the defendant makes a substantial showing that: (1) the affidavit contains statements that are deliberately false or were made in reckless disregard of the truth and (2) the affidavit's remaining contents, after the false statements are excised, are insufficient to justify a finding of probable cause. (*Franks, supra,* 438 U.S. 154.) Here, there is nothing in the record to support any argument that the affidavit contained statements that were deliberately false. Nothing in the record suggests that Marchese had personal knowledge that the front house had been subdivided. (See *People v. Bradford* (1997) 15 Cal.4th 1229, 1299-1301 [search for items already in custody was not illegal where officer was merely negligent in not knowing item had already been seized].) As already discussed, we reject defendant's argument

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that the officers had constructive knowledge that the front house consisted of multiple units.

The record also does not contain evidence that Marchese described the property in reckless disregard of the truth. As the trial court found, there was nothing visible from the street to alert the officers to the fact that the front house was subdivided into three units. None of the other agencies watching the home or any other informant provided any information to place the officer on notice that the house was subdivided. Further, the officer did not have the luxury of time to start searching public records to determine whether

the house, which appeared to be a single two-story home, was partitioned into separate units. On the morning of May 5, 2006, Martinez disclosed to officers that he sold pills to a person at a house in East Palo Alto. He drove with officers to the home and pointed out the residence at 998 Runnymede Street. Cazares, who also was involved in the search at the Watsonville residence, was not as cooperative as Martinez and could have attempted to alert Angel and others that the police were investigating them. The officers therefore needed to move quickly. That same day, the

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officers corroborated the information they had, obtained the search warrant regarding the premises at 998 Runnymede Street, and executed the search in the evening. To require officers to start searching public records to determine whether a house, which appeared from all exterior manifestations from the street to be a single-family residence, had been subdivided would be completely unreasonable. Defendant has pointed to nothing in the record that indicates that Marchese acted in reckless disregard and it would be unreasonable to require officers in the field to search through records in the building department to determine whether a home that appears to be a single residence is subdivided into separate units.

DISPOSITION

The judgment is affirmed.

Lambden, J.
We concur:
Kline, P.J., Richman, J.

THE PEOPLE,
Plaintiff and Respondent,
v.
BENJAMIN COVARRUBIAS RUEZGA,
Defendant and Appellant.

S169338
SUPREME COURT OF CALIFORNIA

February 18, 2009, Filed

OPINION

Petition for review denied.

George, C. J., was absent and did not participate.

Corrigan, Acting C.J.